

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

EMANUEL C. SIMMONS,

Petitioner,

v.

Civil Action No. **3:17CV268**

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia inmate proceeding *pro se*, submitted a letter in which he indicated that he “come[s] to this Court to petition for a writ of actual innocence that is non-biological.” (ECF No. 1.) Given the content of this document, the Court determined that it was appropriate to give Petitioner the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Rivenbark v. Virginia*, 305 F. App’x 144, 145 (4th Cir. 2008). Accordingly, by Memorandum Order entered on April 19, 2017, the Court directed Petitioner to complete and return the forms for filing a 28 U.S.C. § 2254 petition within twenty (20) days of the date of entry thereof. The Court also indicated that, in the alternative, Petitioner could move to withdraw the action. The Court warned that if Petitioner failed to take any action within that time, the Court would dismiss the action without prejudice.

More than twenty (20) days have expired since the entry of the April 19, 2017 Memorandum Order and Petitioner has failed to respond. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE**. To the extent necessary, a certificate of appealability will be **DENIED**.

An appropriate Order shall accompany this Memorandum Opinion.

Date: 5/25/17
Richmond, Virginia

/s/
John A. Gibney, Jr.
United States District Judge